

D.T.E. 98-112

Investigation by the Department on its own motion as to the propriety of the rates and charges filed by Milford Water Company with the Department on November 16, 1999 to become effective June 30, 1999.

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FOR: MILFORD WATER COMPANY

Petitioner

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FOR: TOWN OF MILFORD

Intervenor

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FOR: DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
SETTLEMENT INTERVENTION STAFF

Intervenor

ORDER ON OFFER OF SETTLEMENT

- INTRODUCTION

On November 16, 1998, Milford Water Company ("Milford" or "Company") filed new rates and tariffs with the Department of Telecommunications and Energy ("Department") seeking to collect an increase of \$606,700 over current revenues, pursuant to G.L. c. 164, § 94 and G.L. c. 165, § 2. This represents an increase in total revenues of 24.15 percent. The Department docketed this proceeding as D.T.E. 98-112 and suspended the effective date of the rates until June 1, 1999. On December 22, 1998, the Department appointed Settlement Intervention Staff ("SIS") to facilitate a negotiated settlement of some or all of the issues presented in the case.

On February 16, 1999 the Department conducted a public hearing in the Town of Milford ("Town"). On February 19, 1999, the Town of Milford sought full intervenor status which was granted.

On May 26, 1999, the Company, the Town, and SIS ("Settling Parties") filed a Joint Motion for Extension of the Suspension Period until June 15, 1999 to allow completion of settlement discussions. On May 28, 1999, the Department further extended the suspension of the proposed rates until June 15, 1999. On June 1, 1999, the Company, the Town, and SIS filed an Offer of Settlement ("Settlement") and Joint Motion for Approval of Revised Offer of Settlement with the Department ("Motion"). The Motion requests that the Department approve the Settlement on or before June 15, 1999 (Motion at 1). The Motion states that the Department's approval will provide a result consistent with the public interest, avoid the expense of hearings, and result in just and reasonable rates (id.). The Settling Parties request that the Department move into the record the Company's initial filing and responses to SIS information requests provided during this proceeding (id.). The Settlement is offered with the intent of resolving all issues in D.T.E. 98-112 (Settlement at 1). On June 14, 1999 the Department further extended the suspension of rates until June 30, 1999. On June 15, 1999 the Settling Parties extended the expiration of the Settlement from June 15, 1999 to

June 30, 1999.

- PROPOSED SETTLEMENT

Under the terms of the Settlement, the Company's additional annual revenues shall be \$552, 445, representing an increase of 21.99 percent over revenues as of December 31, 1997 (id. at § 2.1). The Settlement contains attached schedules (Schedules 1 through 12) which represent the substance of the Settling Parties' agreement on rate and service issues

(id. at § 2.3). The Settling Parties agree that the Company's Adjustment Clause for Treatment Plant Reimbursements, Purchased Electric Power, Purification Supplies, Taxes and Water Testing Costs ("Adjustment Clause"), as described in Article 2.5, is reasonable and should be approved (id. at §2.5).⁽¹⁾ The Settling Parties further agree that Article 2.5 of the Settlement, is severable and that the Department may approve the Settlement in its entirety, or, in the alternative, approve the Settlement excluding Article 2.5 (id.). In the latter event, the Settling Parties agree that the terms of the Settlement would reserve procedural rights to the parties and the Department to present or require evidence on the subject of the Adjustment Clause (id. at §§ 2.5, 4.4). The Settling Parties agree that the rates agreed to in this Settlement shall be effective upon the Department's approval of the Settlement by allowance of the Joint Motion, subject to the provisions of Article 2.5 (id. at § 3.1). The Settlement further specifies that new rates in accordance with the tariff sheets attached thereto with an effective date of

June 15, 1999 are a material term of the agreement (id.).

The Settlement specifies that neither the Settlement nor any statements made during hearings related to the settlement shall be deemed to constitute an admission by any party that any allegation or contention in this proceeding is true or false (id. at § 4.1). The Settlement further specifies that in the event the Department does not approve the Settlement, none of the Settlement Parties shall be foreclosed from raising any issue (id.).

The Settlement is further expressly conditioned upon, with the exception of Article 2.5, the Department's acceptance of all provisions herein on or before June 15, 1999 (id. at § 4.3), however, that date has been extended by the Settling Parties to June 30, 1999.

III. STANDARD OF REVIEW

The Department instituted the settlement intervention process to reduce administrative costs incurred by small water companies and their ratepayers in adjudicating rate cases. In assessing the reasonableness of the settlement and the revenue increase reflected in it, the Department must review the entire record presented in the Company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest. See Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992); Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Cambridge Electric Light Company, D.P.U. 89-109, at 5 (1989); Southbridge Water Supply Company, D.P.U. 89-25 (1989); Eastern Edison Company, D.P.U. 88-100, at 9 (1989).

- ANALYSIS AND FINDINGS

The Department has evaluated the provisions of the Settlement and the proposed revenue increase in light of the information submitted by the Company in its original filing and the schedules attached to the proposed Settlement. The Department notes that the Settlement includes a rate structure that balances the competing goals of allocating costs among all rate classes while maintaining rate continuity. See Boston Gas Company, D.P.U. 96-50-A at 4 (1996); High Wood Water Company, D.P.U. 90-57/89-83/88-180, at 3-4 (1990). Based upon the Department's review of the record in this proceeding, the Department finds that the Settlement allowing an annual increase of \$522,445 submitted by the Settling Parties produces a fair result that is consistent with the establishment of just and reasonable rates.

In the past, the Department has not allowed the use of an adjustment surcharge mechanism, which the Company argues would minimize the impact of operational costs and forestall the time and expense of full rate case proceedings.⁽²⁾ Milford Water Company, D.P.U. 92-101, p. 76-78 (1992). The Department found that although the regulatory structure governing utility rates in Massachusetts allows for certain adjustments to rates without the need to file a full rate case (i.e., fuel adjustment clause to account for the volatility in fuel costs), the adjustment clause sheltered the shareholders from a portion of risk, for which such investors are compensated by the return on equity (id. at 78). Further, the Department found that the adjustment clause was not designed to allow for an appropriate sharing of risk between shareholders and ratepayers (id.). Upon reviewing the evidence in this proceeding and the Settlement proposed by the Settling Parties, the Department finds that Company has not demonstrated that its proposed adjustment surcharge is likely to prevent additional risk to the Company or its ratepayers. Therefore, the adjustment clause, Article 2.5 of the Settlement is denied. The Department accordingly adopts all terms of the Settlement but disapproves

Article 2.5.

The Department further finds that any further procedural rights inuring to parties to seek increased revenues under Article 2.5 shall be limited to seeking reconsideration pursuant to the Department Procedural Rule, 220 C.M.R. § 1.11(10) upon demonstration of extraordinary circumstances bringing to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered or demonstration of mistake or inadvertence.

- ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the Joint Motion for Approval of Revised Offer of Settlement with the Department, as filed June 1, 1999 by the Settlement Parties, is hereby granted without inclusion of the severable Article 2.5; and it is

FURTHER ORDERED: That the proposed rates set forth in M.D.T.E. Nos. 12, 13, and 14 are disallowed; and it is

FURTHER ORDERED: That the rates set forth in M.D.T.E. Nos.15, 16, and 17 shall apply to water consumed on or after June 30, 1999.

By Order of the Department,

Janet Gail Besser. Chair

James Connolly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Paul B. Vasington, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Article 2.5 proposes the inclusion of an Adjustment Mechanism that would allow the Company to adjust its rates annually for water service in order to recover Adjustable Costs such as purchased electric power, purification supplies and taxes in excess of the base level of such costs or to refund to customers any treatment plant reimbursement and any decreases in Adjustable Costs from the base level adjustable costs (Petition at M.D.T.E No. 14, Original Sheet 1). The Adjustment Clause is applicable to all water sales made by the Company on a per cubic foot basis and shall be added to the applicable base rate charge for each cubic foot of water sold as determined in the Company's last base rate case (id., Original Sheet 1)).

2. The adjustment mechanism proposed in D.P.U. 92-101 automatically adjusted the following costs: 1) electric power; 2) purification supplies; 3) taxes; and 4) mandated water testing requirements. Milford Water Company, D.P.U. 92-101, p. 71.